

**Tire America, Inc. and District No. 55, International Association of Machinists and Aerospace Workers, AFL-CIO.** Case 13-CA-32622

September 30, 1994

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND COHEN

On August 11, 1994, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 13-RC-18852. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On August 31, 1994, the General Counsel filed a Motion for Summary Judgment. On September 2, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer and response to the Notice to Show Cause, the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding. In addition, the Respondent denies the complaint's allegation that the information requested by the Union is necessary and relevant, contending that the Union's lengthy request was excessive and burdensome; that the request is overbroad insofar as it seeks information about plans and benefits that are provided to nonunit employees and not to unit employees; and that the request is also improper insofar as it seeks information regarding the age of unit employees, as such a request may violate or require the Respondent to violate the Age Discrimination in Employment Act of 1967.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation pro-

ceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that the Respondent has not raised any issue requiring a hearing in this proceeding with respect to the Union's request for information.<sup>1</sup> The complaint alleges that the Union requested the following information from the Respondent:

1. Names of all current bargaining unit employees, including their seniority dates, ages, current rate of pay, and classification.
2. Names of all bargaining unit employees on layoff, including their seniority dates, ages, and last rate of pay and classification.
3. Names of previous bargaining unit employees who have returned or are on disabled status.
4. Information spelling out any incentive, piecework, bonus, or merit increase plans currently provided or administered by the Company.
5. A copy of employee profit sharing plan and/or employee stock purchase plan.
6. A copy of employee retirement or pension, including company/employee costs or contributions and employee benefits.
7. A copy of all insurance plans and benefits provided to active retired, laid off and disabled bargaining unit employees and their dependents; such as hospital-surgical, major medical, sickness and accident, life, dental and eye care insurances.
8. The current company/employee costs or contributions for the respective insurance coverage premiums reflected as an individual monthly cost per employee for both employee and dependent coverage. Any specific information the company has regarding any future increase or decrease in the cost of current employee/dependent insurance coverage premiums.
9. All current job descriptions and qualifications.
10. All current company work rules and safety rules.<sup>2</sup>

<sup>1</sup> Member Cohen believes that the Respondent has raised issues warranting a hearing as to this allegation. Accordingly, he would deny the Motion for Summary Judgment with respect to this allegation.

<sup>2</sup> The Union's letter to the Respondent (which is attached as an exhibit to the General Counsel's motion) also requested the following additional information:

11. Any and all other information not specifically requested above that the company has knowledge of and is relative and vital to "rates of pay, wages, hours of employment, or other conditions of employment" as provided for under the National Labor Relations Act and defined by the Relations Board and the courts relating to the mandatory and permissive subjects of bargaining.

*Continued*

It is well established that the foregoing information, including the age of unit employees, is presumptively relevant for purposes of collective bargaining and must be furnished on request.<sup>3</sup>

Further, even assuming *arguendo* that the Union's request was overbroad and/or burdensome, this would not justify the Respondent's blanket refusal or failure to comply with the Union's request. It is well established that an employer may not simply refuse to comply at all with an overbroad or burdensome information request, but must comply with the request to the extent it encompasses information that the Respondent is statutorily obligated to provide.<sup>4</sup>

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Joliet, Illinois, has been engaged in the sale and installation of tires and related products. During the calendar year preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000 and purchased and received at its Joliet, Illinois facility goods and materials valued in excess of \$5000, which goods and materials were shipped to its Illinois facility directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

###### A. *The Certification*

Following the election held April 22, 1994, the Union was certified on May 10, 1994, as the collective-bargaining representative of the employees in the following appropriate unit:

12. A list of all present jobs, projects and/or work that the company has contracted out to other companies and/or the following information:

- a. Name of company and location
- b. Rate per hour the company charges
- c. Number of employees performing the subcontracted work
- d. How many man hours involved
- e. Total cost of subcontracted work
- f. Reason why the work was subcontracted.

The complaint, however, does not allege the Respondent's failure to provide this additional information as a violation.

<sup>3</sup> See *Holiday Inn Coliseum*, 303 NLRB 367 fn. 5 (1991), and cases cited there.

<sup>4</sup> See *id.* See also *OCAW Local 6-418 v. NLRB*, 711 F.2d 348, 363 (D.C. Cir. 1983).

All full-time and regular part-time automobile service employees located at the Respondent's 3350 Mall Loop Drive, Joliet, Illinois facility, but excluding office clerical employees, sales associates, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

##### B. *Refusal to Bargain*

Since about May 19, 1994, the Union has requested the Respondent to bargain and to furnish information, and since about June 20, 1994, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after June 20, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Tire America, Inc., Joliet, Illinois, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with District No. 55, International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is

relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time automobile service employees located at the Respondent's 3350 Mall Loop Drive, Joliet, Illinois facility, but excluding office clerical employees, sales associates, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(c) Post at its facility in Joliet, Illinois, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with District No. 55, International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time automobile service employees located at our 3350 Mall Loop Drive, Joliet, Illinois facility, but excluding office clerical employees, sales associates, guards and supervisors as defined in the Act.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

TIRE AMERICA, INC.